IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cri. Appeal No. 702 of 2000

Date of Decision: 16th November, 2007

State of H.P.	Appellant
Versus	
Gopal Ram and others	Respondents

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? No.

For the appellant:	Mr.Ashok Chaudhary, Addl. Advocate General.
For the respondents:	Mr.Jagarnath, Advocate, vice Mr. Anand Sharma, Advocate.

Sanjay Karol, J. (Oral)

The present appeal arises out of judgment dated 18th March, 2000 passed by Judicial Magistrate, Ist Class, Bilaspur, in Case No. 160/1 of 11997/ 115/2 of 1997, titled as State vs. Gopal Ram and others, acquitting the accused of the charged offence.

As per the case of prosecution, complainant and accused Nathu Ram are neighbours and a dispute arose when the goats belonging to accused entered into the complainant's fields. On 14th June, 1997 at about 6.10 p.m. the grand-daughters of accused Nathu Ram, Khema Devi and Shodi Devi took their goats through the fields of the complainant to which the complainant's mother Smt. Ramkur Devi (PW-5) objected. At that all the accused persons formed an unlawful

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[1] Whether the reporters of Local Papers are allowed to see the Judgment?

assembly with a common object. Seeing accused persons, PW-5 returned back home. However, all the accused persons pelted stones on her and after entering the courtyard of the house accused No.1 Gopal Ram and accused No.2 Rajesh Kumar gave beatings to PW-5, Shri Pohlo Ram (PW-3) father of complainant and sister Shiv Dei (PW-8) with Dandas, kicks and fists. As a result of the same they received injuries and the victims were saved from the accused by one Shri Rajinder. The accused persons also threatened the complainant and his family members of dire consequences. The incident was witnessed by Shri Rajinder Singh, Baldev Singh and other villagers.

The matter was reported to the police on the same day at about 8.15 p.m. and FIR No.80/92 (Ext.PW-1/A) was registered with Police Station, Bilaspur, on 14th June, 1997 under Sections 451, 147, 149, 323, 506, IPC. The victims were got medically examined through Dr.S.P.Dhiman (PW-6) and Dr. N.K. Sankhyan (PW-7), who gave their reports Ext.PW-6/A to Ext.PW-6/D and Ext.PW-7/A to Ext.PW-7/B, respectively. Weapon of offence Dandas (Exts.P-1, P-7 and P-8) and stones (Ext.P-2 to Ext.P-6) were seized vide seizure memo Ext.PW-2/A to Ext.PW-2/C. Site plan Ext.PW-9/A was also got prepared.

With the completion of investigation, Challan was presented in the Court for trial. The accused persons were charged for an offence under Sections 147, 148, 149, 323, 325, 451, 506 read with Section 147, IPC. The accused did not plead guilty and claimed trial.

In order to prove its case the prosecution examined nine witnesses and the statements of the accused under Section 313, Cr.P.C. were also recorded.

The trial Court disbelieved the story of the prosecution for the reason that witnesses were close relatives and had admitted that there was a cross-case registered against them by the accused persons in relation to the very same incident. It was not clear as to who was an aggressor party and, therefore, accused were acquitted.

Having carefully examined the statements of the witnesses as also the other material on record, it is clear that out of nine witnesses examined by the prosecution, five witnesses are close relatives. Two witnesses are doctors, who have medically examined the injured and two witnesses are police officials.

Satya Pal (PW-1) is the complainant on whose behalf FIR Ext.PW-1/A was registered. Ram Piyari (PW-2) is the wife of PW-1. Pohlo Ram is the father of PW-1. Koka Devi (PW-4) and Shiv Dei (PW-8) are the sisters of PW-1. Ramku Devi (PW-5) is the complainant's mother. The finding of the Court below that the dispute was in relation to flow of drain water is clearly borne out from the statements of the witnesses. This renders the story of the prosecution to be untrue. Further through the version of these five witnesses it is evident that they have admitted that a cross-case in relation to the very same incident was registered against the complainant- party. The investigation in that case has been conducted by ASI Govind Ram is clear from the version of PW-9. They appear to be interested witnesses not revealing the truth. Their testimony is more to protect themselves than to reveal the truth. That apart, it has come on record through the statements of these witnesses that at the time of occurrence of the offence, villagers were present. PW-1 has stated that it was Ram Dei, Roshni and Koka Devi, who

rescued the victims from the accused, whereas PW-2 has stated that they were rescued by Shri Rajinder. As per the prosecution story Shri Baldev Singh had witnessed the occurrence of incident. The story of the prosecution and the version of PW-1 and PW-2 stands contradicted and falsified by the versions of PW-3 and PW-4 who have stated in one voice that none came to rescue the victims in spite of the fact that there were other villagers present at the spot of occurrence. The contradictions are major and fatal to the prosecution case.

There is no explanation on record as to why Shri Rajinder Singh and Baldev Singh or other independent witnesses, villagers, who had witnessed the occurrence of crime were neither associated during the investigation nor examined by the prosecution during trial.

Dr.S.P.Dhiman (PW-6) and Dr.N.K.Sankhyan (PW-7) no doubt have proved the injuries on the body of Shiv Dei, Satya Pal, Ramku Devi and Pohlo Ram, but, however, they have stated that the injuries could be caused by fall. The injuries are all simple and grievous in nature.

PW-1 has admitted that fight had taken place between the complainant and the accused party. Rajinder Kumar (PW-9) has admitted that the incident took place with regard to construction of drain and the cross-case with regard to the very same incident was registered against the complainant-party.

In my view best of the evidence has been withheld by the prosecution and examination of these witnesses would have unfurled the truth and unfurled the true sequence of events about the said incident.

The accused have had the advantage of having been acquitted by the Court below. The material on record has been fully appreciated by the Court below while arriving at its conclusion. There is no perversity in the same. The contradictions in the statements of spot witnesses are material. I, therefore, see no reason to interfere with the finding of the Court below and the appeal is accordingly dismissed. Bail bonds are cancelled.

16th November, 2007
(C)

(Sanjay Karol)
Judge